



August 13, 1999

Ms. Jennifer Jacobs  
Bracewell & Patterson, L.L.P.  
South Tower Penzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2981

OR99-2313

Dear Ms. Jacobs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126426.

The Crosby Independent School District (the "district") received eighteen requests for the entire investigation report prepared by Mr. Carl Schwartz. You claim that portions of the requested information, including student and parent names, are excepted from disclosure under section 552.101 and 552.114 of the Government Code. You indicate that you have released the report, except for the information you claim is excepted, to the requestors. You have submitted a complete version of the report as Exhibit A and a redacted version, with personally identifiable student information removed, as Exhibit B. We have considered your arguments and have reviewed the submitted information.

You assert that some of the requested information, specifically student and parent names, is excepted from disclosure because the information consists of education records made confidential by the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We note that this ruling applies only to “education records” under FERPA. “Education records” are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 (1982), 206 (1978).

We agree that the portions you have redacted in Exhibit B and have identified as “personally identifiable information” must be withheld under FERPA, including parent names. Parent names in the context of the report would personally identify a student. You also argue in your letter to this office that a highlighted portion of the report must be withheld. The documents submitted to this office do not contain any highlighted information. However, we have marked information on pages 5 and 7 of the report that must be withheld under FERPA. The marked information in the context of the report would personally identify a student. You must withhold the information we have marked on pages 5 and 7.

Additionally, it appears that some of the requestors may be parents of students mentioned in the requested report. A parent or adult student has affirmative right of access to that student’s education records. 20 U.S.C. § 1232g(a)(1)(A), (d); *see* Open Records Decision No. 431 (1985) (Public Information Act’s exceptions to required public disclosure do not authorize withholding of “education records” from adult student). To the extent a requestor is seeking their own child’s education records, the district must release this information to the parent. The district may not, therefore, withhold from specific parents those names or portions of the requested report that involve their specific child. If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education’s Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4, n.6, 8.<sup>1</sup>

You finally argue that portions of the report must be withheld under section 552.101 based on a right of privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Information may be withheld from the public under common-law privacy when (1) it is highly intimate

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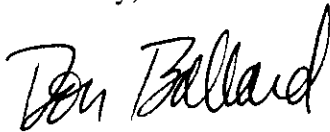
<sup>1</sup>The district is not required to submit copies of education records to this office. *See* Open Records Decision No. 634 at 10 (1995).

and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1(1992). Having reviewed the material submitted as Exhibit B, we do not believe that you may withhold any portion based on a right of privacy. *Id.*; Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986) (constitutional privacy)).

In summary, you must release the redacted report, Exhibit B, except for those portions that we have marked. You may not withhold from a parent under FERPA those previously redacted portions involving their own child.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB\nc

Ref: ID# 126426

encl: Marked documents